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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H3

FILE:

Office: LIMA, PERU

Date: JUL 07 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uruguay who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States.

The OIC found that the record failed to establish extreme hardship to the applicant's U.S. citizen spouse as a result of his inadmissibility to the United States. The application was denied accordingly. *Decision of the OIC*, dated February 20, 2007.

On appeal, counsel states that the OIC failed to take into consideration all the relevant factors in the aggregate in determining whether extreme hardship exists.

The record indicates that the applicant entered the United States through the Visa Waiver Program in October 2002. Visitors entering the United States under the Visa Waiver Program are granted an authorized period of stay of 90 days. Thus, the applicant's authorized stay in the United States would have expired in January 2003. The applicant departed the United States in December 2003, reentering without inspection in January 2004. He then departed the United States for a second time in January 2007. Therefore, the applicant accrued unlawful presence from January 2004, when he entered the United States without inspection until January 2007, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his January 2007 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant or his child experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Uruguay and in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the adjudicating officer failed to consider the applicant's spouse's psychological evaluation, the extreme hardship the applicant's spouse would face raising a child as a single mother, and the economic hardship the applicant's spouse would face with the applicant in Uruguay unable to find employment. Counsel also states that the applicant's spouse cannot abandon her home and family in the United States to relocate to Uruguay. Counsel cites the U.S. Department of State Consular Information Sheet issued for Uruguay, which states that petty crime and burglaries are on the rise and U.S. citizens are advised to exercise extreme caution when traveling in remote areas. *Id.* Counsel submits the U.S. Department of State Consular Information Sheet to support his assertions.

In an undated statement, the applicant states that he has been in Uruguay for six months and has not been able to find employment. He states that he left Uruguay when he was twenty years old and that he is a simple person who cannot even perform a low paying job. He states that crime and poverty are problems in Uruguay. The applicant also states that he does not think that his spouse can adapt to life in Uruguay because she does not speak Spanish and she is used to the peace and security of the United States. The applicant states that he feels bad because he is not able to help his wife and daughter in the United States because he cannot find employment.

The record contains the applicant's waiver interview conducted on August 16, 2006 at the U.S. Embassy in Montevideo, Uruguay. In the interview the applicant states that his spouse is working and he was working until he returned to Uruguay. He states that his spouse is pregnant with their first child and that she would suffer severe hardship as a single mother without the help and support of her spouse.

In an undated statement, the applicant's spouse states that she needs to be with the applicant and that it was very hard for her to deal with being separated from him when he left for Uruguay the first time. She also states that it would be extreme hardship for her to relocate to Uruguay. She states that she came to the United States when she was very young and that she has never been to Uruguay. She states that she does not want to be in a place that she does not know with a newborn baby. She also states that she cannot relocate to Uruguay because of the economic uncertainty it would cause and she does not believe that her newborn baby would get the medical attention he needs. She states that in the United States she has job stability and her family. The applicant's spouse outlines the expenses that she will be responsible for without the help of the applicant if his waiver application is denied. She states that she earns \$1,100 per month and the applicant was earning \$1,300 per month. She states that she has student loans to pay, utilities, medical bills, credit cards, car insurance, groceries, gas, and rent. Finally, the applicant's spouse states that she had to undergo fertility treatments in order to get pregnant and now that she is pregnant she wants to share the pregnancy with the baby's father, the applicant. The AAO notes that the record contains a balance sheet, signed and dated July 17, 2006, that lists the applicant and his spouse's monthly expenses as totaling \$1,475.00 per month and copies of monthly bills to support the assertions made by the applicant's spouse. The AAO also notes that the record indicates that while the applicant was in the United States, he worked as a forklift driver, and the applicant's spouse works as an officer clerk. *See Forms G-325A*, dated July 11, 2005.

The record contains a psychological evaluation from [REDACTED] a clinical psychologist who performed an evaluation on the applicant's spouse on July 18, 2006. During the evaluation the applicant's spouse stated that during her childhood she was continuously separated from her mother and father, living with various family members, then living with an alcoholic father and then finally with her mother. She stated that she spent part of her childhood in the Dominican Republic and part in the United States. After interviewing the applicant, administering the Beck Anxiety Inventory, and performing personality testing, [REDACTED] diagnosed the applicant's spouse with Generalized Anxiety Disorder and Dependent Personality Disorder. She states that the applicant's spouse is suffering significant anxious symptomatology that cut across somatic, non-somatic, and cognitive domains. She also states that the applicant's diagnoses for Dependent Personality Disorder is common among individuals, particularly females, who are exposed to early deprivation, abandonment, familial separation, and/or neglect. She states that these individuals feel utterly unable to function alone, typically lack self-confidence and take criticism, disapproval, and abuse as proof of their worthlessness. [REDACTED] also states that the applicant's responses to inkblots on the Rorschach Test related concerns over separation, co-dependency, and the need for connection at all costs.

The AAO notes that the record contains various documents regarding the applicant's spouse's infertility and then pregnancy; however, the applicant's spouse gave birth to a son in January 2007. Thus, these medical records will not be evaluated in assessing extreme hardship.

The AAO finds that in taking into consideration the applicant's spouse's childhood, the results of the psychological evaluation by [REDACTED] and the applicant's spouse's responsibilities as a new mother, separation would cause the applicant's spouse extreme hardship. However, the AAO does not find that the applicant's spouse would suffer extreme hardship as a result of relocating to Uruguay. The applicant states that his spouse cannot speak Spanish, but, as stated in the psychological evaluation, she lived in the Dominican Republic until she was 12 years old. Furthermore, the record does not support the applicant and his spouse's claims that they will not be able to find employment in Uruguay or that medical care would not be available for them. The record contains no documentation regarding what employment opportunities and/or medical care is available in Uruguay. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not

necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.